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HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952.

No. 752

MARIANNE YGLESIAS,
Petitioner,

-vs-

GULFSTREAM PARK RACING ASSOCIATION, INC.,
Respondent.

BRIEF IN OPPOSITION TO CERTIORARI

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

MARIANNE YGLESIAS has filed her Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, which said court affirmed a decision of the United States District Court for the Southern

District of Florida, Miami Division, dismissing a complaint of the Petitioner on the ground that the said court, after a consideration of the allegations of the complaint, did not consider that there were sufficient allegations in the complaint to raise the question of the operation of the Civil Rights Statute, 8 U.S.C.A., Section 43, which covers the right to sue in the Federal Court for deprivation of any rights, privileges or immunities secured by the Section or under the provisions of the Federal Statute, 28 U.S.C.A., Section 1343, in that there was no claim or showing that the Defendant, Gulfstream Park Racing Association, Inc., was acting under color of any state law.

On behalf of Gulfstream Park Racing Association, Inc., we respectfully say that the Petition is insufficient for the following reasons:

1. There are no new, special or important reasons for the consideration by this Court of the matters already determined by the United States Court of Appeals for the Fifth Circuit.
2. Because there are no conflicting decisions from other Circuit Courts of Appeals on this same matter.
3. There is no important question of Federal Law raised which has not already been settled by this Court.
4. This cause does not raise a Federal question or determine one in any way which would be in conflict with the applicable decisions of this Court.

THE OBJECTION TO THE STATEMENT OF THE MATTERS INVOLVED AS CONTAINED IN THE PETITION FOR CERTIORARI AND BRIEF

1. The Petitioner contends on page 2 of the Petition for Certiorari that the suit was brought under 8 U.S.C. 43, and claimed that the District Court had jurisdiction under 28 U.S.C. 1343. This assertion is made as a conclusive statement of fact and law in the face of the finding by the United States District Court and the United States Court of Appeals for the Fifth Circuit that the court had no jurisdiction because there were no allegations in the complaint sufficient to show that the factual matters would come within the jurisdiction of the Federal Court.

2. The analysis of the complaint as contained on page 2 of the Petition for Certiorari contains matters which are only in the imagination of the party drafting that instrument, because the record itself fails to support any such analysis of the substance of the pleadings.

The learned counsel for the Petitioner in summarizing the substance of the complaint says:

> "The Respondent, through its agents or employees acting under color of the laws of the State of Florida, did subject, or cause to be subjected, the Petitioner to a deprivation of rights secured by the United States Constitution, by falsely imprisoning the Petitioner, by falsely imprisoning her for an unreasonable period of time without bond, and without the right to confer with counsel, by causing the Petitioner to be subjected

> to a criminal trial without affording Petitioner a reasonable opportunity to prepare for such trial."

It is then contended, in substance:

> "The Respondent did conspire with police officers to deprive Petitioner of such constitutional rights, which conspiracy was carried out by said police officers under color of the laws of Florida, by falsely imprisoning the Petitioner."

It is then contended, in substance:

> "The Respondent did conspire with public officials of Broward County, Florida, to deprive Petitioner of such constitutional rights, which conspiracy was carried out by said public officials under color of the laws of Florida by forcing the Petitioner to stand trial on a criminal charge immediately upon arraignment without an opportunity to prepare for such trial."

Such an inference cannot be drawn from the allegations of the complaint. Paragraph IV of the complaint (see page 2 of the record as filed in the United States Court of Appeals, Fifth Circuit), alleges that the Defendant, Gulfstream Park Racing Association, Inc., a Florida corporation, its agents or employees, acting under color of the laws of the State of Florida, did falsely imprison, or cause to be falsely imprisoned, the Plaintiff.

There is no showing or claim that Gulfstream Park Racing Association, Inc., had any police powers or that its officers or agents had any police powers. It is not alleged with whom they conspired, so there are no facts in Para-

graph IV to sustain any such analysis or conclusion contained in the Petition.

Paragraph V of the complaint simply charged that Gulfstream Park Racing Association, Inc., a Florida corporation, its agents or employees, acting under color of the laws of the State of Florida, did subject, or cause to be subjected, the Plaintiff to imprisonment for an unreasonable period of time without bond. Again there was no charge that Gulfstream Park Racing Association, Inc., had any police powers or that it had a jail, or with whom it was supposed to have conspired, or what it did or just how it could be acting under color of authority.

Paragraph VI is in the same vein since it simply charges that Gulfstream Park Racing Association, Inc., or its agents or employees, acting under color of the laws of the State of Florida, subjected or caused to be subjected the Plaintiff to a criminal trial on a charge of Grand Larceny by Trick or Fraud without affording Plaintiff a reasonable opportunity to prepare for such trial.

It is not alleged or shown wherein Gulfstream Park Racing Association, Inc., had as its employee the state's attorney or the prosecuting attorney of Broward County, Florida, or that it controlled or employed the court or the sheriff of Broward County, Florida. So, very properly the lower court and the United States Court of Appeals for the Fifth Circuit felt and held that there were no allegations which would bring the cause of action under the provisions of either 8 U. S. C. A., Section 43, or 28 U. S. C. A., Section 1343.

Apparently the first paragraphs, that is to say, IV, V, and VI, attempted to charge the Defendant, Gulfstream Park Racing Association, Inc., for damages because the officers of the State of Florida or the sheriff, the prosecuting attorney and the Judge of the State courts did not afford the proper type of courtesy or the proper type of trial to the Plaintiff.

Paragraph VII then charges that the Defendant, Gulfstream Park Racing Association, Inc., on April 14th, 1951, conspired with the officers of the Police Department of the City of Hallandale, Florida, to deprive the Plaintiff of her right of freedom, etc. However, the City of Hallandale and the police officers with whom the conspiracy was supposed to have taken place were not named or joined, and just what act could be charged to the Defendant, Gulfstream Park Racing Association, Inc., was not shown, and it was not shown that Gulfstream Park Racing Association, Inc., was attempting to act under any color of authority of any state law, or just in what method or manner or form it could have conspired to affect the rights of the Plaintiff.

Paragraph VIII then charges, in general terms, that the Defendant, Gulfstream Park Racing Association, on the 28th day of April, 1951, conspired with certain public officials of the County of Broward and State of Florida to deprive the Plaintiff of her right to have a fair criminal trial, and forced the Plaintiff to stand trial without affording the Plaintiff an opportunity to prepare for such trial.

In other words, there were two dates involved. First it was claimed that there was a conspiracy at the time of

the arrest on April 14, 1951, but just what the conspiracy was or what it consisted of or with whom the Defendant conspired was not even mentioned in the complaint.

Then it was charged that two weeks later on April 28, 1951, the Defendant conspired again because the courts of Florida arraigned the Plaintiff and ordered the trial. It is not shown or even inferred as to how the Defendant, Gulfstream Park Racing Association, Inc., a Florida corporation, could have had anything to do with the alleged arraignment and trial.

Paragraph IX, however, of the complaint (see Tr. 4 and 5), in the negative, fails to show that the Plaintiff was maltreated, because it pointed out that she did have a lawyer, and was tried and that she was found not guilty by a jury.

Therefore as we read the allegations of the Petition for Certiorari on pages 2 and 3 thereof, we are at a loss to find where counsel can say that "the complaint in substance alleges as follows," when in truth and fact the allegations of the complaint do not in substance allege any such thing.

Then counsel says (see page 3 of the Petition for Certiorari):

> "Under the allegations of this complaint it is possible to prove that employees or agents of the Respondent were officers under the laws of Florida."

There is no such allegation contained anywhere in the complaint.

It is then contended:

> "It is also possible to prove under such allegations that the Respondent conspired with the prosecuting attorney and the trial judge as officials of the State of Florida to force the Petitioner to a trial without preparation."

There is no such allegation contained in the complaint, and there is no conspiracy claimed or shown in that no one was named. If the complaint had charged that Gulfstream Park Racing Association, Inc., had or exercised police powers under color of the Florida law, or that through bribery or intimidation it had forced the prosecuting attorney of Broward County, Florida, to falsely imprison or to falsely prosecute the Plaintiff, or to deprive the Plaintiff of an opportunity to be heard or to have counsel, and should that prosecuting attorney have been named as party-defendant so that the essential elements of a conspiracy could be present, that is to say, more than one person, then the case would have been determined on factors which were not present at the time of the determination of the cause in the lower court.

It is not necessary for us to discuss the law in such an event because such a situation has never been presented to the court for consideration.

In response to these statements of counsel for the Petitioner as to the substantivity of the matters contained in the counts, we have the analysis of those counts by the Court of Appeals for the Fifth Circuit, as reported in 201 F. 2d 817 (see paragraph (1) on page 818), in which the court said:

"What we have in the substantive counts now before us is essentially a charge of false imprisonment, and perhaps malicious prosecution, to which has been added the factually unsupported allegation that plaintiff was thereby deprived of the right to due process, and other rights secured by the Fourteenth Amendment. It may be that the complaint alleges facts sufficient to support an action for false arrest or malicious prosecution. But to show that defendant deprived plaintiff of rights and immunities secured by the Fourteenth Amendment, or caused it to be done, or conspired to that end, plaintiff relies upon bare generalities and conclusions, unsupported by factual allegations. If this is sufficient, then every state court case of false imprisonment may be brought within federal jurisdiction by the mere unsupported assertion that as a consequence of such false imprisonment the plaintiff was deprived of due process, or of other rights secured by the Fourteenth Amendment. The decisions are to the contrary. It has frequently been held, and the rule is recognized in *Bell* v. *Hood*, 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939, 13 A. L. R. 2d 383, that where the alleged claim under the Constitution or federal statutes clearly appears to be colorable, or made solely for the purpose of creating federal jurisdiction over what would otherwise be an action to vindicate a right arising only under state law, and no substantial facts establishing federal jurisdiction are alleged, mere conclusions asserting the violation of a constitutional right are insufficient. *Lyons* v. *Weltmer*, 4 Cir., 174 F. 2d 473; *Taylor* v. *Smith*, 7 Cir., 167 F. 2d 797, 12 A. L. R. 2d 1; note 14 A. L. R. 2d Text page 1100,

et seq.; McGuire v. *Todd,* 5 Cir., 198 F. 2d 60, and the many cases cited in Note 5 to that opinion, particularly *Givens* v. *Moll,* 5 Cir., 177 F. 2d 765; *Bottone* v. *Lindsley,* 10 Cir., 170 F. 2d 705; *Moffett* v. *Commerce Trust Co.,* 8 Cir., 187 F. 2d 242. See also *McCartney* v. *State of West Virginia,* 4 Cir., 156 F. 2d 739, and the note to *Bell* v. *Hood,* 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939, 13 A. L. R. 2d text at page 584. Cf. *Adams* v. *Terry,* 5 Cir., 193 F. 2d 600, 605, second column.

"In *McGuire* v. *Todd, supra,* an action against city officers and employees, this court recently said: 'It is sufficient for us in this case to say: that, as other courts have done, we disregard, as mere conclusions, the loose and general, the factually unsupported, characterizations of the complained of acts of the defendants, as malicious, conspiratorial, and done for the purpose of depriving plaintiffs of their constitutional rights; that the things defendants are alleged to have done, as distinguished from the conclusions of the pleaders with respect to them, do not constitute a deprivation of the civil rights of plaintiffs, do not give rise to the cause of action claimed; * * *' (198 F. 2d 63)."

The Court then commented upon the fact that the conspiracy counts bore a general similarity to the complaint in the *Bell* v. *Hood case, supra.* They say:

"But 8 U.S.C.A., Section 43, upon which this action is expressly based, does not purport to create a cause of action for conspiracy. It creates only a substantive right of action. These conspiracy counts state no cause of action under 8

U.S.C.A., Section 47 (3), which relates to conspiracies, because that section, so far as here material, extends only to conspiracies to deny equality under the law, while the conspiracy counts here involved complain only of a conspiracy to deprive plaintiff of due process. These two propositions are quite distinct. They are not equivalents. *Mitchell* v. *Greenough*, 9 Cir., 100 F. 2d 184 *et al.*"

In other words, and perhaps more simply stated, before there could be any cause of action alleged under Title 8, Section 43, U.S.C.A., Gulfstream Park Racing Association, Inc., would itself have been required to be acting under color of a statute, ordinance or regulation of a state or territory, and it could not be charged that it simply conspired to have someone else do it unless there was a charge as provided for in Title 8, Section 47 (3), that two or more persons conspired in any state or territory, or that two or more persons went, in disguise, upon the premises of another for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the law, etc.

There is not even any purported claim that this original complaint was framed under any of the provisions of Title 8, Section 47, and hence that cause could not be considered to be based upon the alleged conspiracy counts. The Bell decision cannot be used as specific authority in this case (see *Arthur L. Bell, Individually, et al.* v. *R. B. Ho[illegible] et al.*, United States Supreme Court, April 1, 1946, 327 U. S. 678, 90 L. Ed. 939, 66 S. Ct. 773, 13 A. L. R. 2d 383), in that this was a suit brought in a

Federal District Court for damages against agents of the Federal Bureau of Investigation and alleging that the agents, who without doubt were clothed with police authority, damaged the Plaintiffs through imprisoning the Plaintiffs in violation of their constitutional rights.

The lower court dismissed the complaint for want of jurisdiction on the ground that the action was one not arising under the Constitution and laws of the United States. The Court of Appeals affirmed that judgment on the same ground. This Court, in reversing the Court of Appeals, in an opinion concurred in by five of its members (opinion by Justice Black), held that the complaint raised substantial and meritorious constitutional questions as to whether Federal courts could grant money recovery for damages said to have been suffered as result of Federal officers' violating the Fourth and Fifth Amendments.

In the case at bar there was no claim that the Gulfstream Park Racing Association, Inc., itself held any police powers or that its officers or agents held any police powers such as Federal officers held in the Bell case.

We therefore say that the Court of Appeals correctly invoked the proper doctrine and committed no error in upholding the decree of the United States District Court for the Southern District of Florida.

Counsel then contends under "C," "Questions Presented," that two proposals are submitted to the Court for consideration:

"1. Can a private corporation, through its agents or employees, act under color of state law within the meaning of 8 U.S.C. 43?"

We say that is a moot question because there is no claim and no facts which show in any way that this private corporation acted under color of any state law, or what the state law was or what they did.

Since there is no basis for a conspiracy charge and no claim that the suit is founded under the provisions of Title 8, Section 47 (3), U.S.C.A., then the corporation or its agents must have done what was done and complained of under the color of a specific state law. There is no such showing and therefore that question is not properly presented.

The following question is then submitted:

"2. Is a private corporation liable for damages under 8 U.S.C. 43, where the private corporation, through its agents or employees, conspires and agrees with certain duly constituted state officials to deprive a person of his constitutional rights, and such conspiracy or agreement is actually carried out by the said state officials acting under color of state law?"

We think that the United States Court of Appeals for the Fifth Circuit, in the opinion above mentioned in this case (see 201 F. 2d 817, text page 819) clearly disposed of that issue, and that there can be no action for conspiracy under the allegations based upon the complaint that there has been a violation of 8 U.S.C. 43.

That question, therefore, is not before the Court.

The next question presented was as follows:

"3. Did the District Court have jurisdiction over the subject matter under the allegations of the complaint?"

That question is only indirectly involved because of necessity a District Court must take jurisdiction long enough to examine the complaint to see whether there are any factual allegations contained therein which would show a violation of the specific Federal statutes. Any District Court must entertain jurisdiction long enough to determine whether or not the allegations, even though charging false arrest or false imprisonment, show facts which would in addition thereto bring the Federal law into being and make it applicable. The statement by the court that "it does not have jurisdiction over the subject matter" is a misnomer. It is correct, rather, to say that considering the allegations of the complaint, did the complaint state a cause of action over which the Federal Court would maintain jurisdiction. This is merely a play on words and has been fully disposed of by the decisions in the lower court.

The Petitioner, under paragraph "D," "Reasons for Allowance of the Writ," contends that the opinion of the United States Court of Appeals for the Fifth Circuit is in conflict with decisions of other United States Courts of Appeals. We take issue with that statement.

The first case the Petitioner relies upon is *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240. In that case Picking sued the Pennsylvania Railroad, the Governor of the State

of Pennsylvania, and 23 individual defendants, 13 of the defendants being citizens of Pennsylvania, and 10 of the individual defendants alleged to be citizens of New York. Jurisdiction was based upon diversity of citizenship and there was an allegation in the complaint as to the jurisdictional amount. Jurisdiction of the cause was also asserted to lie in the District Court by virtue of the provisions of the Constitution of the United States and of certain federal statutes, specifically naming, among other statutes, 8 U.S.C.A. 47, paragraphs 2 and 3.

In this particular case there was no alleged violation of 8 U.S.C.A. 43. This complaint specifically charged that Governor James of Pennsylvania unlawfully and maliciously issued purported warrants for the unlawful seizure of the plaintiffs on the basis of pretended proceedings for extradition instituted by New York defendants who were falsely purporting to act for the people of the State of New York. It was alleged that Governor James had knowledge of the deficiencies, that District Attorney Dewey from New York had knowledge, that Governor Lehman of New York, who issued the extradition request, had knowledge of the falsity of the allegations used as the basis for extradition. It was alleged that the original arrest and seizure was without warrant of any kind and that there was no warrant issued until after the plaintiffs had been falsely imprisoned at Chambersburg.

It was then alleged that they were unlawfully taken to Harrisburg by certain of the defendants, and that the lady, Mrs. Picking, was robbed of $10.00 by one of the

defendants who was a police officer, and that they were against their wishes unlawfully transported from Harrisburg to New York by others of the defendants, including the Pennsylvania Railroad Company.

In this particular case the Court of Appeals, in discussing the corporate defendant, who was not a police official, stated (see page 249, 151 F. 2d):

> "The corporate defendant The Pennsylvania Railroad Company, however, is not an agency of any state. It is a privately owned railroad corporation. It has moved to dismiss the complaint upon the ground *inter alia*, that 'There is nothing in the allegations of the Complaint that the Pennsylvania Railroad Company did other than transport as a common carrier the complainants while in the custody of officers of the law.' But if, as the plaintiffs assert, this defendant 'materially and physically participated in' all the alleged unlawful acts of September 15, 1941, it may have joined in, or as the plaintiffs put it, 'adopted,' the conspiracy as its own. The complaint does not explain how the corporate defendant *intra vires* could have done so."

In conclusion, the Court held:

> "The court below would have been correct in dismissing the third cause of action as to The Pennsylvania Railroad Company insofar as Mrs. Picking is concerned if the complaint contained no allegations other than those relating to the specific charge of illegal transportation. The complaint goes further, however, and in effect alleges that The Pennsylvania Railroad Company

took part in a general conspiracy to arrest and imprison the plaintiffs."

We ask that the Court note at this point that no such allegations were present in the Gulfstream case, and there was no charge of specific conspiracy with any known parties.

The lower court had dismissed the case in its entirety, but the effect of the Court of Appeals decision was to remand the cause for further proceedings and for amendment to the pleadings, but that case is not in any way in contradiction of the Court of Appeals for the Fifth Circuit's ruling in this case.

Counsel next rely upon the case of *Valle* v. *Stengel*, 176 F. 2d 697, Third Circuit. This was a case filed by certain Plaintiffs who claimed to have been refused admission to a swimming pool and privately owned amusement park open to the public upon the payment of fees, and to have been ejected from the park by the management, aided and abetted by the borough chief of police, because the party included negroes. It was charged that this thereby denied them the equal protection of the laws guaranteed by the Fourteenth Amendment.

In this case the plaintiffs sued a corporate defendant, Rosecliff Realty Co., Inc., which operated Palisade Amusement Park in New Jersey, and also the individual defendants, the Rosenthals and Halpin, who were managers of the park. They sued Stengel, who was Chief of Police of the Borough of Fort Lee, and although the lower court dismissed the entire complaint, the Circuit Court of

Appeals reversed them, making this statement (see page 704):

> "Chief of Police Stengel, if the allegations of the complaint are to be believed, denied the plaintiffs equal protection of the laws and the fact that the law, the protection of which he denied to them, was a statute of the State of New Jersey rather than a statute of the United States, is immaterial. We conclude, therefore, that the complaint does state a cause of action because it alleges that civil rights guaranteed to the plaintiffs by the Fourteenth Amendment and protected by the Civil Rights Acts were invaded by Stengel, acting under color of State law. The other individual defendants and the corporate defendant should be kept in the case as parties at this stage of the proceeding. The corporate defendant can act only through its agents, the individual defendants other than Stengel, and it is alleged that the other individual defendants caused Stengel's acts of which the plaintiffs complain. It is probable that the status of corporate and individual liability will become much plainer when evidence is offered."

One Judge, however, Judge O'Connell, while concurring with the majority with respect to the defendant, Stengel, agreed with the lower court that although the plaintiffs may have had a cause of action under the Act they had not asserted it, and he thought that the corporate defendant should not be left in there simply because the suit was good against Stengel.

In the case at bar there is no one joined as defendant except as a corporate defendant.

Counsel for the Petitioners then rely upon the case of *McShane* v. *Moldovan*, 172 F. 2d 1016. In this particular case Irene McShane brought a suit against a justice of peace, a complaining witness, a constable, and others, because she claimed she was arrested in her home without a warrant on a charge of assault, contrary to the laws and constitution of the State of Michigan. She claimed that she demanded a jury trial but that she did not get an impartial jury and that she thereby suffered an illegal conviction and sentence. The Court said (see page 1018):

> "At the outset, it is to be observed that the guarantees of the Fourteenth Amendment relate only to action by a state, and not to any action of private individuals. * * * Individual invasion of individual rights is not the subject matter of the Amendment; * * * and such an invasion gives no right of action in the federal courts against acts of private individuals. Where a suit is essentially one for malicious prosecution and false imprisonment carried out by individuals, it is properly enforceable in the state courts. The wrongful act of individuals is a private wrong. The complaint in the instant case was brought on the theory that officials of the State of Michigan, conspiring with others and acting under color of Michigan law, deprived appellant of rights secured to her by the Fourteenth Amendment. * * *
>
> "The issue before us is whether a conspiracy entered into between state officers and others acting under color of state law to deprive a person of constitutional rights secured under the Fourteenth Amendment, and resulting in deprivation of such

> rights, gives rise to an action for damages against the conspirators under Title 8, U.S.C.A. 43 and 47."

Said Court found as shown on page 1022 of the case reported 172 Federal Reporter, and in commenting upon the case of *Bottone* v. *Lindsley,* 10 Cir., 170 F. 2d 705, said:

> "It is conceivable that persons, either individually or acting in concert might so use the state judicial process as to deprive a person of his property without due process of law, or of equal protection of the laws, yet we are certain that to make out a cause of action under the Civil Rights Statutes, the state court proceedings must have been a complete nullity, with a purpose to deprive a person of his property without due process of law."

Said Court, in trying to distinguish the Bottone case, claimed that from the allegations of the Bottone case it was clear that the plaintiff had not been subjected to a wholly illegal trial, while they contend in the McShane case that the woman was illegally tried.

There is no charge in this case that Marianne Yglesias was unlawfully charged, or unlawfully arrested, or unlawfully imprisoned, or even subjected to a fraudulent criminal trial. From all that appears from the face of the record in the Yglesias case, the party was properly arrested, was confined to jail and was tried and acquitted. Apparently the only element of violation of federal rights was that she was denied bail, or that she was tried too

soon after her arraignment. There are no factual inferences that she was in a position to put up bail, or what the amount of the bail was, and that in itself certainly would not be any claim or any basis of a claim against an individual or private corporation, which certainly had no right to fix bail for anyone charged with a crime.

We do not think that this case lays down any basic rules or principles which are contrary to the principles adopted by the Court of Appeals for the Fifth Circuit.

Certainly the case of *Bell* v. *Hood, supra,* is not in conflict with the decision of the Court of Appeals for the Fifth Circuit, and it cannot be successfully contended that the Court of Appeals for the Fifth Circuit has failed to apply the law as laid down by this Court, or that the law which it has applied is in conflict with other Circuits passing on this subject.

There is not one case referred to in the Petition or the brief of counsel which is even similar to this case. We do not find any one case where a private corporation was named as a sole party-defendant under a suit claiming a violation of the plaintiff's rights contrary to 8 U.S.C.A. 43.

Counsel relies upon the case known as *Williams* v. *United States,* 341 U. S. 97, 95 L. Ed. 774, 71 S. Ct. 576. That was a Florida case which went through the Court of Appeals for the Fifth Circuit, and said Court of Appeals for the Fifth Circuit was affirmed by this Court.

In that particular case one Jay G. Williams, who was acting as a special police officer and had been duly ap-

pointed as such, was convicted of a violation of the statutes and Constitution of the United States in that he had, under color of a law, wilfully subjected inhabitants of a state to deprivation of rights, privileges and immunities. The United States Court of Appeals for the Fifth Circuit, opinion by Judge Waller, affirmed that judgment and it was held in the opinion by this Court by Mr. Justice Douglas that it was within the province of the jury to properly find that a private detective who held a special city police officer's card and obtained confessions from suspects through the use of force and violence was acting under color of law within the meaning of the civil rights statute.

This case is nowhere in point, and the very court which rendered the decision in the Gulfstream case recognized the difference in the two cases and held that the same doctrine did not apply.

We have carefully analyzed the other decisions which have been quoted by the Petitioner, particularly the case of *U. S.* v. *Lynch*, 94 F. Supp. 1011, and these cases are founded upon the doctrine of a conspiracy in which the individual defendants, not acting under color of law, were intermingling their efforts with policemen or other state officials who were acting under color of law, and thus under the doctrine of a conspiracy (not involved in our case at bar) the courts held that their actions might furnish the basis or ground for a complaint under the federal statutes.

The case of *Watkins* v. *Oaklawn Jockey Club*, 86 F. Supp. 1006, 183 F. 2d 440, is not in point, but even that case recognizes the rule that Section 43 of Title 8, U.S.C.A.,

does not grant a cause of action for conspiracy and that the charge must be based upon a claim where two or more persons conspire in the nature of a conspiracy action under Title 8, U.S.C.A., Section 47, paragraph 3.

CONCLUSION

We therefore respectfully urge that the Petition for Writ of Certiorari be denied in that there is nothing of a Federal question left for determination and that there are none of the reasons present which would ordinarily appeal to this Court as a cause or basis for the granting of a Certiorari.

There is actually no conflict between the ruling in this case and the ruling of other Circuits, and the opinion sought to be reviewed does not violate any of the fixed decisions of this Court.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

October Term, 1952.

No._____

JOSEPH YGLESIAS,

Petitioner,

-vs-

GULFSTREAM PARK RACING ASSOCIATION, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, JOSEPH YGLESIAS, prays that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit, which affirmed the decision of the United States District Court for the Southern District of Florida, Miami Division, dismissing the complaint of the

Petitioner on the ground that said District Court did not have jurisdiction over the subject matter.

A. STATEMENT OF THE MATTER INVOLVED

On March 7, 1952, the District Judge dismissed the complaint of the Petitioner, JOSEPH YGLESIAS, "because of lack of jurisdiction over the subject matter," and the order of dismissal stated therein "this court does not have jurisdiction over the subject matter."

On January 29, 1953, the Court of Appeals for the Fifth Circuit affirmed, Per Curiam, said order of dismissal of said District Court on authority of Marianne Yglesias vs. Gulfstream Park Racing Association, Inc., 201 F. 2d 817. Circuit Judge Richard T. Rives dissented. The said Per Curiam order is reported at 201 F. 2d 819.

The matter involved in this case is almost identical with the matter involved in the case of Marianne Yglesias, Petitioner, vs. Gulfstream Park Racing Association, Inc., Respondent, in which case a Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit has been filed in this Court along with this Petition. There is also filed along with this Petition a Stipulation of Counsel, wherein it is stipulated as follows, to-wit:

1. That the questions of law involved in the said cause are the same questions of law as those involved in the case of Marianne Yglesias, Petitioner, vs. Gulfstream Park Racing Association, Inc., a Florida Corporation, Respondent, now pending on Petition for Certiorari in this Court.

2. That there shall be no printed record in this cause.

3. That there shall be no briefs filed in this cause, and no oral argument in this cause.

4. That the decision of the Court upon the questions of law involved in the case of Marianne Yglesias, Petitioner, vs. Gulfstream Park Racing Association, Inc., a Florida Corporation, Respondent, now pending in this Court shall be the decision of the Court in this case upon the questions of law involved in this case.

5. That this stipulation is made subject to the approval of the Court.

B. JURISDICTION

The basis of jurisdiction of this Court in this case is the same as the basis of jurisdiction as set forth in the case of Marianne Yglesias, Petitioner, vs. Gulfstream Park Racing Association, Inc., Respondent, now pending on Petition for Certiorari in this Court.

C. QUESTIONS PRESENTED

The questions presented by this Petition are the same as the questions which are presented by the Petition in Marianne Yglesias, Petitioner, vs. Gulfstream Park Racing Association, Inc., Respondent, in which case a Petition for Certiorari is now pending in this Court.

D. REASONS FOR ALLOWANCE OF THE WRIT

The reasons for the allowance of the writ are the same as the reasons which are set forth in the case of Marianne Yglesias, Petitioner, vs. Gulfstream Park Racing Association, Inc., Respondent, now pending on Petition for Certiorari in this Court.

The supporting brief which accompanies the Petition in the case of Marianne Yglesias, Petitioner, vs. Gulfstream Park Racing Association, Inc., Respondent, is also applicable to this Petition.

WHEREFORE your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, commanding that Court to certify and to send to this Court, on a day certain to be therein named, a full and complete transcript of the record and all proceedings had in this case, to the end that this case may be reviewed and determined by this Court; that the said judgment of the United States Court of Appeals for the Fifth Circuit may be reversed by this Court; and that your Petitioner may have such other and further relief in the premises as may seem just and proper.

CLAUDE PEPPER
J. M. FLOWERS
HILTON R. CARR, JR.
HERBERT A. WARREN, JR.
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ATTORNEYS FOR PETITIONER

FILED
JUN 1 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952.

No. 753

JOSEPH YGLESIAS,
Petitioner,

-vs-

GULFSTREAM PARK RACING ASSOCIATION, INC.,
Respondent.

BRIEF IN OPPOSITION TO CERTIORARI

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952.

No. _____

JOSEPH YGLESIAS,
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-vs-
GULFSTREAM PARK RACING ASSOCIATION, INC.,
Respondent.

BRIEF IN OPPOSITION TO CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Respondent, GULFSTREAM PARK RACING ASSOCIATION, INC., opposes the granting of the Petition for Writ of Certiorari filed by the Petitioner in the above cause on the following grounds:

1. There are no new, special or important reasons for the consideration by this Court of the matters already determined by the United States Court of Appeals for the Fifth Circuit.
2. Because there are no conflicting decisions from other Circuit Courts of Appeals on this same matter.
3. There is no important question of Federal Law raised which has not already been settled by this Court.
4. This cause does not raise a Federal question or determine one in any way which would be in conflict with the applicable decisions of this Court.

In the companion case of Marianne Yglesias vs. Gulfstream Park Racing Association, Inc., full brief in opposition to the Petition for Writ of Certiorari has been filed by the Respondent.

Counsel have entered into a written stipulation, subject to the approval of this Court, to the effect that there shall be no printed Record in this cause, no briefs and no oral arguments, but that the decision of this Court upon the questions of law involved in the case of Marianne Yglesias vs. Gulfstream Park Racing Association, Inc., a Florida corporation, Respondent, now pending in this Court, shall be the decision of the Court in this case upon the questions of law involved.

We therefore respectfully submit for the Court's consideration the arguments contained in the opposition brief in the Marianne Yglesias case, and respectfully pray that

this Court deny the Petition for the reasons and matters cited herein and supported by the brief in the said Marianne Yglesias case.

Respectfully submitted,

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Attorney for Respondent